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APR 25 2005

OFFICE OF PETITIONS

In re Application of
Dilmore, et al.
Application No. 10/039,811
Filed: January 8, 2002
Attorney Docket No. 12,105-1
For: METAL CONSOLIDATION PROCESS
APPLICABLE TO FUNCTIONALLY GRADIENT
MATERIAL (FGM) COMPOSITIONS OF
TANTALUM AND OTHER MATERIALS

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed December 17, 2004 (certificate of mailing date December 14, 2004), to revive the above-identified application.

The petition is **dismissed**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Petition under 37 CFR 1.137(b)." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely submit a complete reply to the Notice of Allowance and Fee(s) Due, mailed September 23, 2003, which set a period for reply of three (3) months.

The Office mailed a Notice of Allowance and Fee(s) Due with Part B - Fee(s) Transmittal, a Determination of Patent Term Adjustment under 35 U.S.C. 154(b), a Notice of Fee Increase on January 1, 2003, and a Notice of Allowability on May 9, 2003.

On June 2, 2003, petitioner filed an improper CPA and preliminary amendment. The CPA was improper because it is not possible to file a CPA in an application filed after May 29, 2000. The improper CPA was treated as a Request for Continued Examination and prosecution was

reopened.

On July 17, 2003 (certificate of mail date July 10, 2003) petitioner submitted a completed Part B - Fee(s) Transmittal and the issue fee and publication fee. However, at this time, prosecution was reopened. The fees submitted were treated as inactive because prosecution had been reopened.

The examiner reviewed the June 2, 2003 RCE and preliminary amendment and mailed a new Notice of Allowance and Fee(s) Due with Part B - Fee(s) Transmittal, a Determination of Patent Term Adjustment under 35 U.S.C. 154(b), a Notice of Fee Increase on October 1, 2003, and a Notice of Allowability on September 23, 2003. The Notice of Allowance and Fee(s) Due required petitioner to submit a completed Part B-Fee(s) Transmittal by December 23, 2003. The Notice of Fee Increase on October 1, 2003 informed petitioner that effective October 1, 2003, the issue fee would increase from \$1,300 to \$1,330. No reply was received. This application became abandoned on December 24, 2003. A Notice of Abandonment was mailed on February 25, 2004.

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed;
- (2) the petition fee as set forth in 37 CFR 1.17(m);
- (3) a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and
- (4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d).

The instant petition does not satisfy requirement (1) above.

Regarding (1) above, petitioner still has not submitted a completed Part B - Fee(s) Transmittal from the September 23, 2003 Notice of Allowance and Fee(s) Due mailing.

The September 23, 2003 Notice of Allowance and Fee(s) Due states that the PTOL-85B ("Part B- Fee(s) Transmittal") or an equivalent **must** be returned within the set three month period even if no fee is due or the application will be regarded as abandoned.. This application will not be revived until a completed Part-B-Fee(s) Transmittal from the September 23, 2003 mailing is filed in the Office.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By FAX: (703) 872-9306 – ATTN: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3230.



E. Shirene Willis
Petitions Attorney
Office of Petitions